National Labor Relations Board



Weekly Summary of NLRB Cases

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(R-2543): Luis Padilla Named Deputy Regional Attorney in the NLRB's Puerto Rico Office

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Allina Health System d/b/a Abbott Northwestern Hospital, et al. (18-CA-16051-1, et al.; 343 NLRB No. 67) Minneapolis, MN Oct. 29, 2004. Members Liebman and Meisburg held that the Respondents violated Section 8(a)(3) and (1) of the Act by refusing to hire for temporary employment nurses employed by Fairview University Medical Center-Riverdale-Campus and Fairview Southdale Hospital (Fairview) because they were on strike; and violated Section 8(a)(1) by informing the Fairview nurses that they would not hire them because they were on strike. The majority found merit in some of the Respondent's exceptions regarding individual allegations of discrimination and dismissed the corresponding complaint allegations. [HTML] [PDF]

Member Liebman wrote a separate concurring opinion to express her view that "the Respondents' conduct was inherently destructive of the nurses' Section 7 rights." Member Meisburg wrote separately to emphasize his additional concern about the Respondents' defense.

Chairman Battista, dissenting, would reverse the judge's finding that the Respondents violated Section 8(a)(3) by refusing to hire the striking Fairview nurses and dismiss the complaint. He found that the Respondents proved a legitimate and substantial business justification for their refusal to hire the striking Fairview nurses. The Chairman, noting that each of his colleagues added a rationale to the majority rationale, stated: "Neither of these rationales has majority support. In any event, neither rationale is valid."

The Minnesota Nurses Association has represented nurses for decades at Respondents Abbott Northwestern Hospital, Mercy Hospital, North Memorial Medical Center, Methodist Hospital, United Hospital, HealthEast Care System, and Fairview. While each hospital is a single bargaining unit, the hospitals negotiated with the Union for several years as part of a multiemployer bargaining group. Nurses in the Minneapolis area commonly worked for more than one hospital. In order to deal with a severe nursing shortage, the hospitals all utilized temporary nurses from staffing agencies.

In preparation for 2001 negotiations, all of the hospitals abandoned the multiemployer bargaining group format and instead formulated a coordinated bargaining plan and formed an advisory committee. The members of the advisory committee agreed that if the Union struck any of them, the other members would refuse to employ any of the striking nurses during the strike. The hospitals negotiated separately with the Union during the spring of 2001. In mid-May, North Memorial signed an agreement with the Union, which included a "me-too clause" on wages. North Memorial agreed to match the highest wage rate agreed to by any of the other hospitals. The Union gave notice to Abbott Northwestern, Mercy, Methodist, Health East, United, and Fairview of its intent to strike. By the strike deadline, all the hospitals but Fairview had reached agreements with the Union. The Union commenced a strike at Fairview on June 3, 2001.

Following the onset of the strike, the hospitals contacted their temporary staffing agencies and instructed them not to refer for temporary assignments any striking Fairview nurses. The temporary agencies sent several striking nurses on assignments during the strike and the hospitals refused to allow the striking nurses to work. The hospitals sent them home and threatened to fire the temporary agencies that supplied them in contravention of the hospitals' policy.

The judge rejected the Respondents' argument that their refusals to hire were lawful because they were not based on any antiunion animus, but rather were for the purpose of supporting their coordinated bargaining partner and advancing their own economic interests. The judge found that the Respondents were motivated by antiunion animus. The Respondents excepted.

The majority found that the Respondents' asserted concerns do not constitute a legitimate and substantial business justification for their discrimination against the Fairview nurses. Noting that each unionized Respondent limited the scope of its dispute with the Union to their bilateral negotiations, and each successfully concluded its negotiations with the Union, they wrote: "The only purpose of the Respondents' refusal to hire the striking Fairview nurses at that point was to influence the outcome of the ongoing dispute between Fairview and the Union. In effect, the Respondent expanded this bilateral labor dispute by introducing a new front of economic warfare. This conduct cannot be reconciled with the Act's objective of encouraging collective bargaining to reduce industrial strife."

(Chairman Battista and Members Liebman and Meisburg participated.)

Charges filed by the Minnesota Nurses Association; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Minneapolis, Nov. 5-7, 2001. Adm. Law Judge William J. Pannier III issued his decision Aug. 2, 2002.

AEi2, LLC (4-CA-32421; 343 NLRB No. 56) Berlin, NJ Oct. 29, 2004. Affirming the administrative law judge's decision, the Board concluded that the Respondent violated Section 8(a)(5) and (1) of the Act by repudiating its 2002-2004 collective-bargaining agreement with Laborers Local 199, failing to adhere to the terms and conditions of the agreement, and failing to provide the Union with necessary and relevant information. The Board found merit in exceptions filed by the General Counsel and Charging Party, and modified the judge's Order to provide an instatement order and make-whole relief for those work applicants who, but for the Respondent's unlawful repudiation of the collective-bargaining agreement would have been referred to the Respondent for employment through the Union's hiring hall. [HTML] [PDF]

The Board rejected the Respondent's contention that the judge erroneously denied its motion to sequester witnesses at the hearing. The Respondent made the motion after opening statements. The motion pertained only to Local 199 President William Carter. The Respondent acknowledged that the only other witnesses, Local 199 Organizer Gurvis Miner and General Manager Bernard McKenna, would have properly remained in the hearing room as party representatives. The judge denied the motion as untimely. The Board held that even if this was an error, the Respondent has not shown that it was prejudiced by Carter's presence in the hearing room. See Fed.R.Evid. 615; see also Wright & Miller, Federal Practice and Procedure Sec. 6244 (West 2004) (no time is specified for making a sequestration motion).

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by Laborers Local 199; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Philadelphia on April 12, 2004. Adm. Law Judge Jane Vandeventer issued her decision June 30, 2004.

Barron Heating & Air Conditioning, Inc. (19-RC-14429; 343 NLRB No. 58) Bellingham, WA Oct. 29, 2004. The Board held, contrary to the Regional Director, that the petitioned-for single overall unit of sheet metal employees employed in the Employer's commercial, residential, and service departments at its Bellingham, WA facility is an appropriate unit for the purposes of collective bargaining, and remanded the proceeding to the Regional Director for further appropriate action. The petitioning union is Sheet Metal Workers Local 66. [HTML] [PDF]

The Employer is a heating, ventilation, and air conditioning (HVAC) contractor. The parties have a lengthy collective-bargaining history governed by Section 8(f) of the Act. The Employer was formed in approximately 1973 and about that time it signed a master labor agreement with the Petitioner's predecessor labor organization.

The Regional Director found that the petitioned-for combined unit of sheet metal employees was not appropriate and instead found two separate units to be appropriate; one comprised of all sheet metal employees employed in the Employer's commercial department and the other comprised of sheet metal employees employed in the Employer's residential and service departments. By order dated Feb. 19, 2004, the Board granted the Petitioner's request for review. The election was conducted as scheduled on Feb. 11, 2004, and the ballots were impounded.

In its decision on review, the Board determined that the petitioned-for unit of all of the Employer's sheet metal employees is appropriate because the employees share a sufficient community of interest to constitute an appropriate overall single unit: HVAC sheet metal employees employed by the Employer perform nearly identical processes, using the same tools and skills, with interchange of duties in an integrated environment. The Board wrote:

Beginning in 1973 the commercial, residential, and service workers were organized into one unit, with separate addenda later negotiated to cover specific issues related to each group. All three groups continued to be subject to the general terms of the master labor agreement. While the Employer and Petitioner are currently signatories to an 8(f) agreement covering only the Employer's commercial department employees, this current limited 8(f) relationship is not sufficient to preclude a finding that the unit sought by the Petitioner is appropriate. To the extent bargaining history is considered, it weighs more heavily in favor of finding a single overall unit of sheet metal employees appropriate.

(Members Schaumber, Walsh, and Meisburg participated.)

Bunting Bearings Corp. Corp. and Allied Industrial, Chemical and Energy Workers International and its Local 6-0293 (7-CA-43996, et al., 7-CB-12863; 343 NLRB No. 64) Kalamazoo, MI Oct. 29, 2004. Chairman Battista and Member Schaumber held, in agreement with the administrative law judge and contrary to dissenting Member Liebman, that the Respondent did not violate Section 8(a)(3) and (1) of the Act by implementing a partial lockout of the bargaining unit following an impasse in negotiations for a successor collective-bargaining contract. Accordingly, the majority agreed with the judge that the lockout did not taint a decertification petition subsequently circulated by a majority of unit employees, and that the Respondent did not violate Section 8(a)(5) by relying on the petition to withdraw recognition from, and to refuse to bargain with, the Union. [HTML] [PDF]

In agreeing with the judge that the lockout was lawful, Chairman Battista and Member Schaumber found that the judge's conclusion properly accords with the Board's decision in *Harter Equipment*, 280 NLRB 597 (1986), that as a general rule an employer violates neither 8(a)(1) nor 8(a)(3) when, after a bargaining impasse has been reached, it applies economic pressure on its employees to accept its bargaining position by locking them out and continuing business operations with temporary employees. Applying the *Harter* analysis to this case, the majority found that the Respondent's lockout of nonprobationary employees was in furtherance of a legitimate bargaining position and that the General Counsel failed initially to establish that the lockout was unlawful. They wrote:

Because probationary employees had a lesser interest in the Respondent's bargaining proposals and because they were disenfranchised from any Union vote on whether to accept its proposals, the Respondent had a lesser need to pressure them to accept the Respondent's proposals. As the group that controlled the outcome on whether to accept its bargaining proposals, we find that the Respondent's decision to target the nonprobationary employees with the lockout was motivated by legitimate business reasons rather than membership considerations.

Member Liebman noted that a lockout, like the one here, intended to "discourage union membership or otherwise discriminate against union members as such," violates Section 8(a)(3), citing *American Ship Building Co. v. NLRB*, 380 U.S. 300 at 312 (1965). She wrote: "The Employer locked out only union members. In contrast, probationary employees, who the Employer admittedly believed were *not* union members, were instructed to report to work. When the Union set up a picket line, the Employer fired the one probationary employee who refused to cross, an unfair labor practice the Employer concedes. Not surprisingly, the Union soon lost support among employees, and the Employer seized on that fact to stop bargaining and to withdraw recognition from the Union."

Member Liebman said the majority's rationale in accepting the Employer's claim that the selective lockout was legitimately motivated by the need to continue operations "does not stand up" because the least experienced and least knowledgeable workers in the unit were chosen to work. She observed that the majority then invents its own rationale, never advanced by the

Employer: that probationary employees had less influence over the Union's bargaining position than did nonprobationary employees. "In any case, the rationale offered by the majority is not legitimate, because, at bottom, it focuses on employees' relationship to the union as the basis for discrimination," Member Liebman concluded.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Allied Industrial, Chemical and Energy Workers International and its Local 6-0293 and Dana Kane, an individual; complaint alleged violation of Section 8(a)(1), (3), (4), and (5) and Section 8(b)(1)(A). Hearing at Kalamazoo, April 16-18, 2002. Adm. Law Judge Arthur J. Amchan issued his decision July 5, 2002.

Enloe Medical Center (20-CA-31241; 343 NLRB No. 61) Chico, CA Oct. 29, 2004. Agreeing with the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain in good faith with the California Nurses Association concerning the effects of its change in the on-call policy in the Women's Services Department, and bypassing the Union and dealing directly with employees regarding the effects of the change in the on-call policy; and violated Section 8(a)(1) by directing employees not to discuss working conditions with other employees, and directing employees to talk to Respondent about their working conditions rather than discussing them with other employees. [HTML] [PDF]

Turning to the alleged 8(a)(1) conduct, charge nurses at an April 24, 2003 meeting presented Jennifer Eddlemon, clinical coordinator of the Women's Center, with their concerns that four nurses, including Cindy Smith and Cathe Lawson, were expressing negative attitudes and were complaining at the nurses' station. It was decided that Eddlemon and Peggy Chelgren-Smith, director of the Women's Center, would "coach" Lawson and Smith. Pam Sime, Respondent's vice president of human resources, defined "coaching" as mentoring an employee to correct a potential concern. The judge noted that "coaching" could lead to discipline if the behavior was not corrected. He found that the only instances of complaints and negative attitude of Smith and Lawson had to do with their discussion of working conditions with their fellow nurses and that Eddlemon's "coaching" of Smith and Lawson amounted to a directive to stop engaging in protected concerted activity or face formal discipline.

In affirming the judge's conclusion that the Respondent violated Section 8(a)(1) by "coaching" nurses Lawson and Smith against their continued "complaining" and "negative behavior," Chairman Battista said he is not suggesting that employers are generally prohibited from counseling employees about factors relating to employee morale. He found however that the Respondent violated the Act because the particular "complaining" and "negative behavior" included Section 7 activity and accordingly, the Respondent's admonition that the negative behavior and complaining were expected to cease was unlawful.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by the California Nurses Association; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Chico on Oct. 28, 2003. Adm. Law Judge John J. McCarrick issued his decision Feb. 23, 2004.

Equitable Life Assurance Society of the U.S. and ITC Fashion Valley Corp. d/b/a Fashion Valley Shopping Center (21-CA-33004; 343 NLRB No. 57) San Diego, CA Oct. 29, 2004. The Board held that the Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing Rule 5.6.2 prohibiting consumer boycott handbilling and by excluding union handbillers at the entrances to the Robinsons-May department store at the Fashion Valley Shopping in San Diego, CA on Oct. 4, 1998. The administrative law judge found that the exclusion of the handbillers violated Section 8(a)(1). Finding merit in the General Counsel exception to the judge's failure to rule on the separate complaint allegation that the maintenance of the rule prohibiting consumer boycott handbilling was also unlawful, the Board wrote: [HTML] [PDF]

California law permits the exercise of speech and petitioning in private shopping centers, subject to reasonable time, place, and manner rules adopted by the property owner. . . . Rule 5.6.2, however, is essentially a content-based restriction and not a time, place, and manner restriction permitted under California law. That is, the rule prohibits speech 'urging or encouraging in any manner' customers to boycott one of the shopping center stores. By contrast, there is no evidence in the record explaining how Rule 5.6.2 regulates the time, place, or manner of speech at the Mall. Rather, it appears that the purpose and effect of this rule was to shield the Respondent's tenants, such as the Robinsons-May department store, from otherwise lawful consumer boycott handbilling.

There were no exceptions to the judge's finding that under California law, time, place, and manner rules can be applied to labor activity conducted at private shopping malls or large stand-alone shopping facilities in California; and that among the time, place, and manner rules allowed under California law are rules requiring the disclosure of the names of the persons who seek to engage in expressive activity.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Graphic Communications Local 432M; complaint alleged violation of Section 8(a)(1). Hearing at San Diego on Oct. 10, 2000. Adm. Law Judge William L. Schmidt issued his decision Sept. 26, 2001.

Framan Mechanical, Inc. (22-CA-23845, 24031; 343 NLRB No. 53) Freehold, NJ Oct. 29, 2004. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by interrogating employees about their activities for Plumbers Local

Union No. 9, creating the impression that its employees' union activities were under surveillance, and threatening employees with job loss if they selected a union to represent them. [HTML] [PDF]

Chairman Battista and Member Schaumber, with Member Walsh dissenting, reversed the judge's finding that the Respondent violated Section 8(a)(3) and (1) by laying off employees Brian Yutko and Kenyatte Wingo; demoting employee Edgar Harris from journeyman to apprentice, reducing his pay, issuing him two written warnings, and laying him off; and issuing a written warning to employee Thomas Lanzo and laying him off. Chairman Battista and Member Schaumber found that the Respondent laid off Yutko and Wingo for valid economic reasons, demoted Harris after it learned that he was not qualified for journeyman status because he had not completed the requisite number of hours of employment and training, and legally issued written warnings to Harris and Lanza for declining performance and productivity and laid them off due to a lack of plumbing work.

Member Walsh wrote: "[G]iven the backdrop of unfair labor practices in which these actions occurred, and the fact that the evidence in the record contradicts the Respondent's stated reasons for taking these actions, the majority errs in finding that the actions were lawful; thus, the judge's findings that they violated Section 8(a)(3) and (1) should be adopted.

There were no exceptions to the judge's findings that the Respondent did not interrogate employees and threaten them with job loss in violation of Section 8(a)(1), by soliciting questions from employees at an employee meeting on Feb. 15, 2000, and by telling employees that, if a collective-bargaining agreement were in place, the Respondent might not be able to employ them on jobs in other parts of the state. And, there were no exceptions to the judge's finding that the Respondent made valid offers of reinstatement to Yutko, Harris, and Lanza in June 2000.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Plumbers Local Union No. 9; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Newark, Jan. 23-25 and Feb. 7-9, 2001. Adm. Law Judge Raymond P. Green issued his decision June 21, 2001.

Hialeah Hospital (12-CA-20339, 20943, 12-RC-8398; 343 NLRB No. 52) Hialeah, FL Oct. 29, 2004. The Board found, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(1) and (3) of the Act in several respects, that the Respondent's unlawful conduct interfered with the Nov. 1999 election held in Case 12-RC-8398 (Carpenters Local 1554 lost 7-4), and that the results of the election should be set aside. [HTML] [PDF]

Chairman Battista and Member Schaumber held, contrary to the judge, that the coercive effects of the Respondent's unlawful conduct can be erased and a fair rerun election ensured by the use of traditional remedies and accordingly, reversed her finding that the Respondent violated Section 8(a)(5) by failing to bargain with the Union and her recommendation that a *Gissel*

bargaining order be issued. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Member Liebman disagreed, noting the small size of the bargaining unit; that the coercive effects of the hallmark violations are unlikely to be dissipated or diluted; that the Respondent's unlawful conduct is further compounded by the involvement of a high-level official, Manuel Linares, the Respondent's vice president; and that the Respondent failed to offer any evidence that it attempted to mitigate the effect of its unlawful conduct.

The judge found, with Board approval, that Linares committed several 8(a)(1) violations during a mandatory meeting held with the Respondent's engineering department employees on Aug. 31, 1999, just hours after receiving Carpenters Local 1554's demand for recognition and its representation petition. The Respondent also violated Section 8(a)(1) by, among others, the unlawful surveillance of union adherent Rodolfo Rodriguez, first by monitoring his movements more closely after it discovered that he had contacted the Union, and later by secretly videotaping him in his workroom with a hidden camera. The Respondent violated Section 8(a)(3) by discharging Rodriguez because of his union activities, and removing a shower head and ping pong table previously used by the engineering department employees because of their union activity.

Chairman Battista would dismiss the Section 8(a)(3) allegation concerning the ping-pong table, saying the "removal of the table, which had become a problem before the initiation of Union activity, and which an employee and a supervisor had said was disrupting the employee's work area, was lawful."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Carpenters Local 1554 and Guillermo Manresa, an Individual; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing held at Miami on 10 days between June and Nov. 2000. Adm. Law Judge Jane Vandeventer issued her decision April 25, 2001.

Insta-Print, Inc., t/a IPI Lithography & Graphics (5-CA-31428; 343 NLRB No. 49) Upper Marlboro, MD Oct. 28, 2004. Affirming the administrative law judge's conclusions, the Board found that the Respondent violated Section 8(a)(3) of the Act by discharging employees because they joined a strike; and violated Section 8(a)(1) by threatening to discharge employees if they go on strike and telling employees that the strikers were fired because they joined the strike. The judge found, with Board approval, that the strike which began on Aug. 1, 2003 was converted to an unfair labor strike on about Aug. 8, 2003. Chairman Battista found it unnecessary to pass on whether the Respondent violated Section 8(a)(1) when Supervisor George Riston told employee Andrew Nelson that the strikers "had been replaced, and they won't be getting their jobs back" because it would be cumulative of the other violations found, and would not affect the remedy. [HTML] [PDF]

No exceptions were filed to the judge's findings that the Respondent violated: (1) Section 8(a)(1) by promising a pay raise and other benefits to employees who did not join the strike, soliciting from an employee the increased benefits she wanted to refrain from joining the strike, telling employees that support for the Union would be futile, telling employees that they would receive a pay increase because they did not join the strike, and coercively interrogating employees about union activity and support; (2) Section 8(a)(3) by granting a pay raise to employees because they refrained from joining the strike; and (3) Section 8(a)(5) by direct dealing with employees concerning their terms and conditions of employment, and granting a wage increase to employees represented by the Union without first giving the Union notice and an opportunity to bargain about the wage increase. No exceptions were filed to any of the judge's findings that dismissed complaint allegations.

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by Washington Printing, Pressmen, Assistants and Offset Workers Local 72; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Washington, DC, March 22-25, 2004. Adm. Law Judge William G. Kocol issued his decision June 14, 2004.

Pan American Grain Co., Inc. (24-CA-9138, et al.; 343 NLRB No. 47) San Juan, PR Oct. 26, 2004. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(5) and (1) of the Act by implementing its Feb. 27, 2002 layoff of 15 striking employees without giving Congreso De Uniones Industriales De Puerto Rico adequate notice and a reasonable opportunity to bargain; and that a full backpay and reinstatement remedy is appropriate. The Board found merit in the Respondent's exception to the judge's finding that the strikers made an unconditional offer to return to work on July 10, 2002, and amended the judge's decision and recommended order to reflect its finding that the first unconditional offer to return to work was made on Aug. 5, 2002. [HTML] [PDF]

No exceptions were filed to the remainder of the judge's decision, including his findings that the Respondent violated Section 8(a)(5) and (1) by refusing the Union's Aug. 20, 2002 request that it state the position of employees at the Respondent's Ameilia, Corujo, Muelle, and Anexo Romana facilities; and violated Section 8(a)(3) and (1) by treating the returning strikers as new hires, denying them reinstatement to their previous positions or substantially equivalent positions when such positions became available after the employees made unconditional offers to return to work, and by reducing the wages of the returning strikers.

(Members Liebman, Schaumber, and Meisburg participated.)

Charges filed by Congreso De Uniones Industriales De Puerto Rico; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at San Juan on 32 days from Nov. 13, 2002 to Dec. 4, 2003. Adm. Law Judge Paul Bogas issued his decision April 12, 2004.

Saint-Gobain Abrasives, Inc. (1-CA-39789, 40476; 343 NLRB No. 68) Worcester, MA Oct. 29, 2004. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by changing the scheduled work hours of bargaining unit employees without prior notice to and bargaining with Auto Workers Region 9A. [HTML] [PDF]

In so doing, Members Schaumber and Meisburg relied on the judge's finding that there was no past practice of reducing the hours of bargaining unit employees in response to the Respondent's annual, end of the calendar year slowdown business. They found it unnecessary to pass on whether the change in hours would have been lawful if a consistent past practice had existed, relying on *Eugene Iovine, Inc.*, 328 NLRB 294 (1999), enfd. 1 Fed. Appx. 8 (2d Cir. 2001). Member Walsh agreed with the judge's analysis and application of *Eugene Iovine*.

Citing *Stone Container*, 313 NLRB 336 (1993), the Board agreed with the judge that the Respondent did not violate Section 8(a)(5) and (1) by implementing an interim health insurance program in Nov. 2002 because the parties were at impasse on Nov. 15, 2002 when the Respondent announced its intention to implement its final interim health insurance. The Board noted that the Respondent had an annual process of reviewing and adjusting its health insurance programs and, accordingly it was not obligated to refrain from implementing its proposed changes until an impasse was reached in bargaining for a collective-bargaining agreement as a whole. It did not reach the issue of whether the Respondent was required to negotiate to impasse before implementation, finding it was unnecessary to the disposition of the case. The Board also found it unnecessary to rely on the judge's discussion of *R.B.E. Electronics of S.D.*, 320 NLRB 80 (1995). Member Walsh believes that impasse in bargaining is a prerequisite to lawful unilateral implementation of a bargaining proposal in situations governed by *Stone Container*.

(Members Schaumber, Walsh, and Meisburg participated.)

Charges filed by Auto Workers Region 9A; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Boston, Nov. 18-21, 2003. Adm. Law Judge David L. Evans issued his decision April 27, 2004.

Shares, Inc. WAP, Inc., and WAP, LLC, a single employer (25-CA-28771; 343 NLRB No. 59) Shelbyville, IN Oct. 29, 2004. The Board upheld the administrative law judge's findings that the Respondent is a successor to Wellman Automotive Products, Inc. pursuant to NLRB v. Burns Security Services, 406 U.S. 272 (2972), and that it violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Auto Workers as the exclusive representative of bargaining unit employees. [HTML] [PDF]

The Respondent is a not-for-profit corporation that employs and trains individuals with disabilities. It did not except to the judge's finding that Shares, Inc., WAP, Inc., and WAP, LLC constitute a single employer. The judge found, and the Board agreed, that the appropriate unit is: "all production and maintenance employees of Shares, Inc., who are engaged in the manufacture of glow plugs at the 705 Mausoleum Road, Shelbyville, Indiana facility, EXCLUDING all office

and clerical employees, guards, professional employees, and supervisors as defined in the Act." The Board also affirmed the judge's conclusion that the Respondent had hired a substantial and representative complement of its workers on April 28, 2003.

(Members Schaumber, Walsh, and Meisburg participated.)

Charge filed by the Auto Workers; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Indianapolis, May 3-4, 2004. Adm. Law Judge Keltner W. Locke issued his decision June 15, 2004.

Shelby County Health Care Corp. d/b/a The Regional Medical Center at Memphis (26-CA-21173, et al.; 343 NLRB No. 48) Memphis, TN Oct. 27, 2004. The Board, in dismissing the complaint, agreed with the administrative law judge that the Respondent is exempt from the Board's jurisdiction because it is a political subdivision and, accordingly found it unnecessary to pass on the judge's alternative findings with respect to the alleged unfair labor practices. The complaint alleged that the Respondent discharged Amelia Witzleb because she joined and supported Service Employees Local 205, denied Becky Wood 24 hours of paid sick leave because she gave testimony to the Board in an affidavit and/or otherwise cooperated in a Board investigation, and committed other misconduct that interfered with employee Section 7 rights. [HTML] [PDF]

The Respondent is engaged in the operation of a hospital and associated clinics providing inpatient and outpatient medical care. Citing *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 604-605 (1971), the judge found that Respondent is exempt from the Board's jurisdiction as a political subdivision because it is administered by board members who are responsible to the mayor and the county commissioners of Shelby County, TN, and because its operating budget is approved by the county commission and funded by county fees and property taxes.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Amelia Witzleb and Becky Wood, Individuals; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Memphis, Jan. 20-23 and 30, 2004. Adm. Law Judge Margaret G. Brakebusch issued her decision March 31, 2004.

The Toledo Blade Co., Inc. (8-CA-33734; 343 NLRB No. 51) Toledo, OH Oct. 28, 2004. The Board considered the issues based on the parties' stipulation of facts and determined that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing a work rule and disciplinary policy for its pressroom employees without notifying and bargaining with Toledo Newspaper and Printing Graphics Union No. 27N. The Board concluded that the Respondent's

work rules and disciplinary policies are mandatory subjects of bargaining, and that the Respondent's change had a material, substantial, and significant impact on the employees' terms and conditions of employment. [HTML] [PDF]

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Toledo Newspaper and Printing Graphics Union No. 27N, a/w Graphic Communications; complaint alleged violation of Section 8(a)(1) and (5). Parties waived their right to a hearing before an administrative law judge.

Wise Alloys, LLC (10-CA-34319; 343 NLRB No. 60) Sheffield, AL Oct. 29, 2004. The Board adopted the administrative law judge's finding that the Respondent unilaterally changed its practice of exclusively using Electrical Workers IBEW Local 558's hiring hall to select bargaining unit employees in the positions of electrical technician and crane operator, in violation of Section 8(a)(5) and (1) of the Act. [HTML] [PDF]

The Union had a bargaining relationship with Respondent's predecessor employer, Reynolds Aluminum, from the 1940s. In 1999, Respondent purchased Reynolds' assets and Respondent recognized the Union as the exclusive representative of unit employees. Respondent started operations on April 1, 1999. For a time there was no written agreement regarding Reynolds and Respondent's use of the union hiring hall. Instead the Employers, both Reynolds and Respondent, exclusively used the union hiring hall pursuant to verbal agreements. On Nov. 1, 2002, Respondent and the Union set their agreement in writing.

The judge found that the Respondent's collective-bargaining agreement with the Union and its practice before February 2003 was to consider only referrals from the union hiring hall in filling bargaining unit positions and that the Respondent changed that practice in early 2003 without offering to bargain over the change.

The Board found merit in the Respondent's contention that paragraph 2(a) of the judge's recommended Order is overboard and limited the Respondent's obligation to hire exclusively from the Union's hiring hall to the electrical technician and crane operator positions under the Union's jurisdiction. Finding merit in the General Counsel's contention, the Board modified the judge's recommended order to include an instatement and backpay remedy for those applicants who would have been referred to the Respondent by the Union for employment were it not for the Respondent's unlawful conduct.

(Members Liebman, Schaumber, and Walsh participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Roehl Transport, Inc. (an Individual) Marshfield, WI October 26, 2004. 30-CA-16743; JD(ATL)-56-04, Judge Keltner W. Locke.

HH3 Trucking, Inc, Gretchen Hudson, an individual, William Hudson, an Individual (Teamsters Local 325) Peoria, IL October 25, 2004. 33-CA-14374; JD-104-04, Judge Michael A. Rosas.

Michigan Road Maintenance Co., LLC d/b/a Michigan Roads Maintenance Co., LLC (Teamsters Local 247 and an Individual) Detroit, MI October 27, 2004. 7-CA-46426, 46891; JD-108-04, Judge Joseph Gontram.

Carriage Inn of Dayton (Health Care and Social Service District 1199, SEIU) Dayton, OH October 27, 2004. 9-CA-40909, 40913; JD-107-04, Judge John T. Clark.

NO ANSWER TO COMPLAINT

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Cosmo Electric Co. and its alter ego Cosmo Electric Services, a single employer (Electrical Workers [IBEW] Local 60) (16-CA-23396; 343 NLRB No. 50) San Antonio, TX October 28, 2004. [HTML] [PDF]

Vortex Electrical Systems, Inc. (Electrical Workers [IBEW] Local 479 and an Individual) (16-CA-22990, 23099; 343 NLRB No. 55) Dickinson, TX October 29, 2004. [HTML] [PDF]

Vogt Plumbing and Heating and Air Conditioning (Sheet Metal Workers Local 45 and Plumbers Local 33) (18-CA-16982, et al.; 343 NLRB No. 65) Oskaloosa, IA October 29, 2004. [HTML] [PDF]

Row-Wall Electric, Inc. (Electrical Workers [IBEW] Local 602) (16-CA-23630, 23814; 343 NLRB No. 66) Lubbock, TX October 29, 2004. [HTML] [PDF]

Paragon Custom Homes, Inc. (Carpenters Local 587) (18-CA-17312; 343 NLRB No. 62) Madison, SD October 29, 2004. [HTML] [PDF]

Pannex Painting Co., Inc. (Painters District Council No. 14) (13-CA-41322; 343 NLRB No. 63) Franklin Park, IL October 29, 2004. [HTML] [PDF]

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

King Electric, Inc. (Electrical Workers [IBEW] Local 8) (8-CA-35105; 343 NLRB No. 54) Toledo, OH October 29, 2004. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

- Renaissance Senior Living Management, Inc., Santa Cruz, CA, 32-RC-5262, Oct. 29, 2004 (Chairman Battista and Members Liebman and Walsh)
- Vic West Steel, Spokane, WA, 19-RC-14520, Oct. 28, 2004, Oct. 28, 2004 (Chairman Battista and Members Schaumber and Walsh)
- A.T. 's Electric, Fort Worth, TX, 16-RC-10591, Oct. 27, 2004 (Chairman Battista and Members Liebman and Walsh)
- North American Enclosures, Inc., Central Islip, NY, 29-RC-10007, Oct. 27, 2004 (Chairman Battista and Members Liebman and Meisburg)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Alpha School Bus Co., Crestwood, IL, 13-RC-21203, Oct. 27, 2004 (Chairman Battista and Members Liebman and Walsh)

DECISION AND DIRECTION OF SECOND ELECTION

Correctional Medical Services, Bridgeton, NJ, 4-RC-20761, Oct. 29, 2004 (Chairman Battista and Members Liebman and Walsh)

First Vehicle Services, Inc., South Hackensack, NJ, 29-RC-10228, Oct. 27, 2004 (Chairman Battista and Members Liebman and Walsh)

DECISION AND ORDER [remanding proceeding to Regional Director]

Polar Beverages Corporation, Milford, CT, 34-RC-2050, Oct. 27, 2004 (Members Liebman and Walsh; Chairman Battista dissenting)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND DIRECTION OF SECOND ELECTION

First Student, Inc., Anchorage, AK, 19-RD-3610, Oct. 25, 2004 (Chairman Battista and Members Liebman and Walsh)

DECISION AND DIRECTION [that Regional Director open and count challenged ballots]

Centro Unido de Detallistas de Puerto Rico, San Juan, PR, 24-RD-486, Oct. 29, 2004 (Chairman Battista and Members Liebman and Walsh)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

The Waters of Three Rivers, Painted Post, NY, 3-RC-11492, Oct. 27, 2004 (Chairman Battista and Members Liebman and Walsh)

Associated General Contractors of America, Greater Detroit Chapter, Inc., Southfield, MI, 7-RC-22700, et al., Oct. 28, 2004 (Members Liebman, Walsh, and Meisburg)

Miscellaneous Board Orders

DECISION AND ORDER [dismissing petition]

International Cargo Marketing Consultants, d/b/a Alliance Air, Jamaica, NY, 29-RC-10137, Oct. 29, 2004 (Chairman Battista and Members Liebman and Walsh)

DECISION ON REVIEW AND ORDER [affirming Regional Director's decision and direction of election]

Francisco Vega Otero, Inc., Caguas, PR, 24-RC-8322, Oct. 29, 2004 (Chairman Battista and Members Liebman and Schaumber)

ORDER [denying Employer's request for review of Regional Director's denial of Employer's motion to reopen record]

Marcor Remediation, Inc., Libby, MT, 19-RC-14519, Oct. 27, 2004(Members Schaumber, Walsh, and Meisburg)
